

IN THE MATTER OF the Human Rights Code , R.S.O. 1990, c. H.19, as amended;

BETWEEN

PATRICIA BARBER
Complainant

-and-

SEARS CANADA INC.
Respondent

BEFORE: Professor H.A. Bassford
Chair, Board of Inquiry

HEARINGS: Toronto, Ontario
December 21, 1992

APPEARANCES: Fiona Campbell
Counsel for the Human Rights Commission

Mary Beth Currie
Counsel for Sears Canada Inc.

INTERIM DECISION
QUESTION OF VENUE
January 6, 1992

I was appointed on October 19, 1992 by the Minister of Citizenship to chair a board of inquiry pursuant to the Human Rights Code, R.S.O., 1990, c. H.19, as amended. The Board was instructed to hear the matter of the complaint made by Patricia Earber on December 6, 1988 against Sears Canada Inc. The complaint alleged discrimination in facilities on the basis of handicap.

The facts giving rise to this complaint took place in St. Catharines, Ontario. At the hearing of December 21, 1992, Ms. Currie, counsel for the respondents requested that the remainder of the hearing be held in Toronto, or, barring that, that the next two scheduled days be held in St. Catharines and the remainder of the hearing be held in Toronto. She based this request upon the balance of convenience, noting that all of the Sears witnesses, including their expert witness, are located in the Toronto region. She argued that given the proposed compromise, and that no witnesses have been made known to them by the Commission, the expense of travelling for the entire hearing is an excessive cost for the respondent. Ms. Currie also noted that because there has been only one complaint, and that the complainant is deceased, the educative value of commencing the inquiry can be achieved with the change of venue.

Ms. Campbell, counsel for the Commission, opposed the request for a change of venue. She stated that although the complainant has passed away, her daughter, Mrs. Lois Morimoto, is her executor, will be "standing in her shoes," and as such is entitled to attend the entirety of the hearing. Ms. Campbell stated that it would be "very inconvenient" for Mrs. Morimoto to travel from St. Catharines to Toronto. She also noted that at least one or two witnesses the Commission will call are located in St. Catharines. Ms. Campbell further argued that the educational process is furthered for the community by having the entire hearing in the community in which the alleged act occurred. She relied upon *Younge v. Abraham* (1970). (Ont.Bd.Inq.).[unreported], wherein Prof. Tarnopolsky, as he then was, stated,

On a number of previous occasion Boards of Inquiry have emphasized that one of the reasons for the hearings being held in public, and one of the reasons for the holding of the hearings in the place the alleged act of discrimination occurred, is the educational effect such hearings have, not only on the Respondent, but in the community as well.

There are two principles to be considered in deciding this reest. First, as both courts agreed, a basic principle for a decision on change of venue is the existence of an overwhelming preponderance of convenience. Recent Ontario Boards of Inquiry (e.g. *Meissner v. 506756 Ontario Ltd.*(No.1) (1990) 11 C.H.R.R. D/11, *Carere v. Family and Children's Services of Guelph and Wellington County* (1992). (Ont.Bd.Inq.).[unreported]) have drawn upon this principle as articulated in *Younge v. Abraham*,

...it is well settled law, as stated by Mr. Justice Gale (as he then was), in the case of *Dixon v. Wrightman* (1949) Ontario Weekly Notes 697 at 699 that in order to succeed in an application for change of venue:

"It must be shown that it is demanded by an

overwhelming preponderance of convenience."

In the present case it would be more convenient for witnesses for the Commission to present their evidence in St. Catherines and witnesses for the respondent to testify in Toronto. But it would clearly be inconvenient for Mrs. Morimoto to travel to Toronto. The evidence thus suggests a relative balancing of convenience, but not the overwhelming preponderance of convenience required for a change of venue.

The second ground to be considered is the educational value of the hearing. The educational effect of a hearing on a community would ordinarily be served through having that hearing in the community involved. The fact that there was only one complaint and that the complainant is deceased does not imply that there is or would be no community interest in or educational purpose served for the community by holding these hearings in St. Catherines. The fact that the Commission proposes to call witnesses who reside in St. Catherines itself indicates the opposite. Nor has it been shown how the educative purpose for the community of St. Catherines could be achieved by holding the hearings at some distance away in Toronto.

For both of these reasons, then, I find that I cannot accede to the request for a change of venue.

H.A. Bassford
Chair, Board of Inquiry

